

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:07-CV-00739**

DAVID F. EVANS, et al.,)	
)	
Plaintiffs,)	DEFENDANT
v.)	CITY OF DURHAM, NORTH CAROLINA'S MOTION FOR PARTIAL SUMMARY JUDGMENT (GOVERNMENTAL IMMUNITY)
THE CITY OF DURHAM, NORTH CAROLINA, et al.,)	
)	
Defendants.)	
)	

Defendant City of Durham, North Carolina (the “City”), by and through its attorneys, and pursuant to Rule 56(b) of the Federal Rules of Civil Procedure, hereby moves for summary judgment on all of the state-law causes of action in Plaintiffs’ Amended Complaint that were asserted against the City or against any person who allegedly acted in his “official capacity” on behalf of the City, on the ground of governmental immunity.

IN SUPPORT WHEREOF, the City respectfully shows the Court the following:

1. As a governmental entity, the City is immune from tort liability.
2. Plaintiffs’ Causes of Action 13-22 are state-law tort claims alleged against the City or against individuals allegedly acting in an “official capacity” on behalf of the City.
3. Pursuant to North Carolina General Statute § 160A-485(a), a city may waive its governmental immunity *only* through the purchase of liability insurance or

participation in a local government risk pool that provides coverage for the claims at issue. The City has done neither.

IN FURTHER SUPPORT of this motion, the City respectfully offers and relies on the accompanying Affidavit of Darwin Laws, the City's Risk Manager, dated October 22, 2008, and the following Exhibits attached thereto:

1. Exhibit 1 – The Insurance Company of the State of Pennsylvania Policy No. 4205-2178, effective April 1, 2005 to April 1, 2006
2. Exhibit 2 – The Insurance Company of the State of Pennsylvania Policy No. 4206-3929, effective April 1, 2006 to April 1, 2007
3. Exhibit 3 – Everest Reinsurance Company Policy No. 71P2000024-071, effective April 1, 2007 to April 1, 2008

IN FURTHER SUPPORT of this motion, the City offers and relies on the accompanying Brief in Support of Defendant City of Durham, North Carolina's Motion for Partial Summary Judgment (Governmental Immunity).

WHEREFORE, Defendant City of Durham, North Carolina prays that this Court grant summary judgment in favor of the City as to Causes of Action 13-22, as set forth above and in the accompanying brief, and award the City such other and further relief as is just and proper. Because of the complex legal issues involved in applying the doctrine of governmental immunity, as well as the dispositive nature of this Motion, the City respectfully requests that the Court grant oral argument pursuant to Local Rule 7.3(c)(1).

This the 22nd day of October, 2008.

FAISON & GILLESPIE

By: /s/ Reginald B. Gillespie, Jr.

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CERTIFICATE OF ELECTRONIC FILING AND SERVICE

The undersigned hereby certifies that, pursuant to Rule 5 of the Federal Rules of Civil Procedure and LR5.3 and LR5.4, MDNC, the foregoing pleading, motion, affidavit, notice, or other document/paper has been electronically filed with the Clerk of Court using the CM/ECF system, which system will automatically generate and send a Notice of Electronic Filing (NEF) to the undersigned filing user and registered users of record, and that the Court's electronic records show that each party to this action is represented by at least one registered user of record, to each of whom the NEF will be transmitted.

This the 22nd day of October, 2008.

FAISON & GILLESPIE

By: /s/ Reginald B. Gillespie, Jr.

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